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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
INCOME TAX APPEAL NO. 1241 OF 2000

The Commissioner of Income Tax-II
Pune. ... Appellant

Versus

Shivaji Works Ltd.
Shivshahi, Solapur 24. ... Respondents

Mr. Ashok Kotangale i/by R.N. Bandyopadhyay for Appellant.

Mr. Atul Jasani for Respondents.

CORAM: F.I. REBELLO &
R.V. MORE, JJ.
DATED: JULY 06, 2007

ORAL JUDGMENT (Per F.I. Rebello,J.):

. The respondents have raised a preliminary objection, that considering the valuation for the purpose of filing appeal and the notifications by C.B.D.T. issued and the judgments of this court the appeal as filed is not maintainable and ought to be dismissed. On the other hand, on behalf of the Appellants, their learned counsel submits that on merits the issue is squarely covered in favour of the revenue by the judgment of the Supreme Court in Britannia Industries Ltd. Vs. Commissioner of Income Tax, 2005 278 ITR 546 (SC). The Apex Court by the said judgment has held that the the expenses for maintenance of guest house are not subject to exemption or disallowed under section 37(4) of the Income Tax Act. It has also been pointed out that the circular itself provides that when the issue is

recurring, an appeal can be preferred. On behalf of the Respondents, their learned counsel has drawn our attention to the judgments of this court in the Commissioner of Income Tax Vs. Chemco Colour Company 254 ITR 565 (Bom). A learned Bench of this court was considering the circular No. 279/126/98-IT dated 27.3.2000. The learned Bench after considering the purport and object of the said circular was pleased to hold that considering the policy decision as enumerated in their circular the appeal as filed was contrary to the instructions issued in the circular which is binding on the revenue. Our attention was next invited to the judgment in Commissioner of Income Tax Vs. Zoyeb Y. Topiwala, (2006) 284 ITR 379 (Bom) where also what was under consideration was a similar circular. The learned Bench relied in the case of Chemco Colour and another and held that even in respect of old matters the instructions would be binding and accordingly dismissed the appeal. Reference was also made to the judgment of the Commissioner of Income Tax Vs. Pithwa Engg. Works, Vol. 276 ITR 519 (Bom) where the learned Bench took a view that the circular is applicable even to the old reference which are still undecided. We may point out that in that case, in view of the circular reference as made was not answered.

. On behalf of the appellant, their learned counsel

points out that inspite of these judgments the learned Bench in cases where the matter was covered by the Judgment of the Supreme Court and this court has been hearing the appeals and our attention is invited firstly to the order dated 21.7.2005 in M/s. Desa Hospital (ENT Section) Vs. The Commissioner of Income Tax, in Income Tax Reference No. 100 of 1998 as also to the order dated 4.10,.2005 in the case of Commissioner of Income Tax Vs. Advani Oerlikon in Income Tax Reference No. 181 of 1998. Our attention is also invited to the Judgment of the Punjab High Court in the case of Commissioner of Income Tax Vs. Abhishek Industries Ltd. (2006) 286 ITR 1 (P&H) to contend that the appeal by revenue in cases covered by the judgement of the High Court and Supreme Court will still be maintainable irrespective of the circular. It is also pointed out that the Judgement of this court had been considered by the learned Bench of the Punjab and Haryana High Court.

. A Judgment of a Coordinate Bench of this court would be binding on us unless we propose a different view, in which event, normally the Court should direct the matter be heard by a larger Bench. We however, find that inspite of the judgment in Chemco Colour and Topiwala and Others, the learned Bench constituting the same members, has been entertaining the appeals in the matters covered by the Judgment

of the High Court and the Supreme Court. In other words the learned Bench has treated the two groups of appeals differently. The ratio of the judgment in Chemo (supra) and other judgments which have taken a similar view will have to be understood in that context. In that view of the matter, in our opinion, the matter does not require to be referred to a larger Bench, however, we may clarify the law based on the judgments cited.

3. We may refer to Para 3 of the Circular dated 24 th October, 2005 which reads as under :

> "3. The Board has also decided that in cases involving substantial question of law of importance as well as in cases where the same question of law will repeatedly arise, either in the case concerned or in similar case, should be separately considered on merits without being hindered by the monetary limits."

. The circular therefore, itself clearly makes out an exception, when appeals can still be preferred.

4. Apart from that we must also note that this court is a court of superintendence exercising jurisdiction over the Tribunals. The law decided by the Supreme Court will be binding on this court and

all tribunals and authorities. The law decided by this court will also be biding on the tribunals and authorities within its jurisdiction. The supervisory jurisdiction of this court is always available to correct errors of law apparent on the face of the record. The mere fact that there is a circular, would not stand in a way of this court exercising its supervisory jurisdiction. That what is being held is an appeal will make no difference. In our opinion, para 3 of the circular dated 24.10.2005 24.6.2005 supports the view that we have taken.

5. In the light of that in our opinion, the circulars and the judgments which have considered the said circular can be read as under :

(1) In those cases where the issue is not covered by the judgment of the Supreme Court or of this court, in all such cases, the circular will apply and Revenue department would be bound by the circulars and the appeals as filed will have to be rejected, unless they fall within the exceptions as contained in the circular.

(2) In all those matters where appeals have been preferred and the issue of law arising therein has been covered either by the judgment of this court or of the Supreme Court, it will be open to this court

to exercise its jurisdiction and dispose of these appeals in terms of the law declared by the Supreme Court or by this court.

. We therefore clarify the proposition of law considering the earlier judgments of this court, which were brought to our attention.

6. In the instant case, as the Judgment of the Supreme Court covers the case of the appellant, the appeal as filed will have to be allowed and in the light of that the following question :

> "Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that repairs to the guest house was not an expenditure incurred on the maintenance of the guest house under Section 37(4) of the I.T. Act, and was therefore, an admissible deduction"

is answered in the negative.

. Appeal disposed of accordingly. There shall be no order as to costs.

(R.V.MORE,J.) **(F.I. REBELLO,J.)**